Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements	)	CC Docket No. 98-171
	)	
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities	)	CC Docket No. 90-571
	)	
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	

COMMENTS OF BT NORTH AMERICA INC.

A. Sheba Chacko
Kristen Neller Verderame
BT North America Inc.
11911 Freedom Drive, 11th Floor
Reston, VA 20190
(571) 203-6821

Joel S. Winnik
David L. Sieradzki
Ronnie London
Hogan & Hartson L.L.P.
555 Thirteenth St., N.W.
Washington, D.C. 20004
(202) 637-5600

Dated: April 22, 2002

Table of Contents

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements	)	CC Docket No. 98-171
	)	
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities	)	CC Docket No. 90-571
	)	
	)	
Administration of the North American Numbering Plan	)	CC Docket No. 92-237
	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	

COMMENTS OF BT NORTH AMERICA INC.

BT North America Inc., on its own behalf and on behalf of its U.S. affiliates (collectively "BTNA") [1/], by counsel, hereby submits their Comments in response to the Further Notice of Proposed Rulemaking released on February 26, 2002, in the captioned proceedings. [2/]

1/ BTNA and other wholly-owned subsidiaries of British Telecommunications Group plc ("BT") are licensed by the FCC to provide interstate and international telecommunications services. They meet the U.S. connectivity needs of BT's global multi-site corporate customers, providing a comprehensive range of data, voice and IP products and services to corporate customers, including international frame relay, ATM, private line, managed bandwidth, virtual private network, voice and teleconferencing services.

2/ *Federal-State Joint Board on Universal Service*, Further Notice of Proposed Rulemaking and Report and Order, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116 and 98-170, FCC 02-43 (rel. Feb. 26, 2002) (hereinafter "FNPRM" or "Order" depending on portion of document referenced).

INTRODUCTION AND SUMMARY

BTNA takes no position at this time on whether the Commission should adopt a flat-fee per line universal service contribution methodology, or whether the existing revenue-based system should be retained. However, if the Commission adopts a per-line or per-connection system, BTNA submits that the Commission should take several steps to ensure that such a system complies with established law and promotes the public interest.

First, whether the contribution methodology is based on net revenues or connections, the Commission must retain the existing exemption for carriers with predominantly international traffic. Even under a connection-based methodology, the risk remains that such carriers could be required to contribute more in universal service payments than they generate from interstate service, which would impose the same "heavy inequity" that led to the Fifth Circuit's remand of the original universal service rules. The revenue-based international *de minimis* threshold could continue to be used; or in the alternative, a connection-based international *de minimis* threshold could be developed. Also, lines used exclusively for intrastate or international traffic should not be included in the contribution base.

Second, imposing different contribution amounts on identical connections would be unfair and would violate Section 254(d) of the Act. Therefore, the Commission should decline to adopt proposals such as imposing greater contribution amounts on lines serving multi-line business customers (using a residual calculation), than it imposes on otherwise identical lines serving residential customers.

Third, no additional contribution obligations should apply to short-term or temporary telecommunications, such as credit card or prepaid calling card calls or teleconferencing services, which consumers access using facilities for which contributions have already been assessed.

Fourth, the Commission should apply the same contribution methodology to telecommunications relay services, local numbering portability, and the North American Numbering Plan that it adopts for universal service.

Fifth, the Commission's proposed adoption of a collect-and-remit system would eliminate the need for any of the proposed restrictions on how carriers collect contributions from customers.

I. THE COMMISSION MUST RETAIN THE INTERNATIONAL *DE MINIMIS* EXEMPTION EVEN IF IT IMPLEMENTS A CONNECTION-BASED CONTRIBUTION METHODOLOGY

Even if the Commission adopts a flat fee per connection basis for assessing universal service contributions, it must retain its *de minimis* international revenue exemption. [3]/ BTNA respectfully disagrees with the Commission's suggestion that "if we adopt a per-connection assessment, a limited international revenue exception would no longer be necessary." [4]/ Rather, the considerations that

---

[3]/ *See Federal-State Joint Board on Universal Service*, Sixteenth Order on Reconsideration and Eighth Report and Order, 15 FCC Rcd 1679, 1687, ¶ 19 (1999) (adopting 47 C.F.R. § 54.706(c) ("Any entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than 8 percent of its combined interstate and international end-user telecommunications revenues shall contribute . . . based only on such entity's interstate end-user telecommunications revenues.")).

[4]/ Order at ¶ 128 n.318.

originally necessitated the *de minimis* international revenue exemption would continue to apply even under a flat-fee per-connection or per-line contribution methodology.

A revenue-based threshold should continue to be used to prevent carriers with a very small proportion of domestic revenues from paying contributions that exceed that revenue amount. The Commission adopted a *de minimis* international revenue exemption after the U.S. Court of Appeals for the Fifth Circuit reversed portions of the FCC's initial contribution methodology, noting the "heavy inequity" that could be imposed on carriers who potentially faced "contribut[ing] more in universal service payments than they will generate from interstate service." [5/]

The problem that motivated the Fifth Circuit decision remains a very real possibility and a valid concern even under a connection-based methodology, as the following example shows. Consider two carriers – Carrier A provides 200 private lines at DS3 capacity, each between a U.S. point and a foreign point, while Carrier B provides 199 private lines at DS3 capacity between a U.S. point and a foreign point and 1 DS3 private line between two U.S. points in different states. Because all of its services are international, Carrier A would be entirely exempt from paying universal service contributions. Under the proposal in the FNPRM, Carrier B would be subject to contribution obligations for all 200 connections that it provides. This creates a manifest inequality, and a very real likelihood that

---

[5/] *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999) ("*TOPUC I*").

Carrier B's contribution liabilities will far exceed its revenues from interstate operations. Such an outcome, the Fifth Circuit found, is "arbitrary and capricious and manifestly contrary to the statute." [6]/

BTNA submits that, even under a connection-based regime, carriers should continue to qualify for the limited international revenue exemption based on the domestic interstate percentage of their total U.S. end-user revenues from interstate and international telecommunications. The Commission only recently raised the threshold to qualify for the exemption from 8 percent to 12 percent, consistent with BTNA's arguments. [7]/ This was an appropriate and much-needed step, and should continue in effect even if the Commission adopts a connection-based contribution methodology in the current FNPRM. A change at this point is unnecessary and would be disruptive.

In the alternative, the Commission could adopt a connection-based international *de minimis* exemption in conjunction with a connection-based contribution methodology. For example, in the case of a carrier selling private lines or private ATM/frame networks to business customers, if 12% or fewer of those lines are domestic – U.S.-to-U.S. connections – as opposed to international (U.S.-to-international connections) – the carrier would be entirely exempt from universal service contributions. This would carry the limited international revenue exemption forward into the new connection-based regime, without running afoul of what the

---

[6]/ *Id*.

[7]/ Order, ¶¶ 127-128. Though BTNA advocated raising the threshold to 12.75 percent, *see* BTNA Comments on NPRM, BTNA applauds the FCC's responsiveness on this issue.

Fifth Circuit identified as the "inequity" of requiring a carrier to "incur a loss to participate in interstate service," an outcome that violates the Act's mandate that contributions to universal service be imposed on an "equitable and non-discriminatory" basis. [8]/

In addition, the Commission should clarify that contributions are due only on connections that are used primarily to connect to *domestic* public or private networks – and not on connections used primarily to connect to *foreign* public or private networks. For example, a carrier would not have to report or remit contributions for a private line if the carrier certifies that 50% or more of the traffic over that line is international. [9]/ This would be analogous to the treatment envisioned for purely intrastate connections.

In sum, the Commission cannot simply assume that, by moving to a connection-based contribution mechanism, it will solve the problem that led to the establishment of the international *de minimis* exemption. That problem will continue to exist, which means that – consistent with the Fifth Circuit remand order – any new contribution mechanism must include some type of *de minimis* exemption to address the problem.

---

[8]/ *See TOPUC*, 183 F.3d at 435; 47 U.S.C. § 254(d).

[9]/ This would be analogous to the certification that 90% or more of the traffic on a line is intrastate, the criterion used to deem a private line "intrastate" for separations and access charge purposes. *MTS and WATS Market Structure Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 & 80-286, 4 FCC Rcd 5660 (1989). In the alternative, a 90% threshold could be used – if 90% or more of the traffic is international, then the line would be considered international and would be exempt from reporting or contribution obligations.

II. THE COMMISSION SHOULD IMPOSE THE SAME CONTRIBUTION OBLIGATION ON WIRELINE AND WIRELESS CARRIERS, AND REGARDLESS WHETHER THE END-USER IS RESIDENTIAL OR A SINGLE-LINE OR MULTI-LINE CUSTOMER

The reviewing courts have held that implicit subsidies are unlawful and must be eliminated. [10]/ Consistent with that directive, the current revenue-based system imposes an identical contribution obligation on all telecommunications offerings, regardless of the identity of the carrier or the end-user. The Commission must continue to adhere to that policy, which is mandated by the statutory requirement that all contributions be "equitable and nondiscriminatory," [11]/ and should reject proposals to impose greater obligations on particular categories of end users or carriers. Imposing a greater contribution obligation on certain categories of carriers (*e.g.*, greater assessments on wireline than wireless carriers), or a higher rate for providing an identical line to a multi-line business customer as compared with a residential customer, would establish implicit, hidden cross-subsidies and would be inequitable and discriminatory, all in violation of the Act.

Thus, if the Commission adopts a per-connection contribution mechanism, it must apply the same contribution liability based on the telecommunications capacity that a carrier provides to an end-user, regardless of the identity of the carrier or the identity of the end-user. Proposals in the FNPRM to impose different contribution amounts on identical connections would be unfair and

---

[10]/ *See Comsat Corp. v. FCC*, 250 F.3d 931, 938 (5th Cir. 2001); *Alenco Communications, Inc. v. FCC* 201 F.3d 608, 622-23 (5th Cir. 2000); *Texas Office of Public Utility Counsel. v. FCC,* 183 F.3d 393, 425 (5th Cir. 1999).

[11]/ 47 U.S.C. § 254(e).

unlawful. For example, Sprint's suggestion of calculating different per-connection assessments for fixed and mobile subscribers [12]/ does not meet Section 254(d)'s non-discrimination criteria. There is no principled basis – including "maintaining relative contribution burdens on different industry segments" – to treat fixed and mobile customers differently. [13]/ Both get the same benefit from, and impose the same burdens on, the public switched network. The same contribution burden therefore should apply to all.

Likewise, imposing different contribution amounts on identical connections offered to different customer classes would be inequitable and discriminatory. [14]/ Thus, the Commission should not adopt a fixed rate level (*i.e.*, $1 per voice-grade line) to apply to residential or wireless customers and apply a different, presumably higher level to apply to multi-line business customers. [15]/ To impose greater assessments on business users than on residential users for an identical voice-grade connection would violate the "equitable and nondiscriminatory" requirements in the statute. By contrast, there would be no statutory impediment to applying different contribution obligations based on differing amounts of capacity – for example, as WorldCom proposed, a 40:8:1 relationship

---

[12]/ *See* FNPRM at ¶ 60.

[13]/ *Id*.

[14]/ *Id*. ¶ 50.

[15]/ *Id*. ¶ 51.

between connections at the DS3, DS1, and voice-grade level [16]/ – as long as all carriers and users pay the same contributions for the same increment of capacity.)

In sum, for a principled methodology based on a per-connection or per-line contribution to withstand judicial scrutiny under Section 254(d), the Commission must insist that all carriers who provide the same service, and all customers who receive the same service, be subject to the same universal service burden.

III. IN A CONNECTION-BASED SYSTEM, CARRIERS SHOULD NOT BE SUBJECT TO CONTRIBUTION OBLIGATIONS FOR PROVIDING TRANSITORY TELECOMMUNICATIONS

The Commission should adopt its proposal that carriers are not liable to make contributions when they provide short-term or temporary telecommunications that do not involve a permanent "line" or connection. [17]/ For example, services such as credit card or prepaid calling card calls, teleconferencing, and "overflow" capacity offered in connection with private lines or ATM/frame relay networks should not make a carrier liable for additional contribution amounts. When offering these services, the carrier is not really providing the end-user with a line or connection *per se*, but rather with a service that can be accessed using lines or connections provided by other carriers. Any universal service levy for the line or connection used would be paid by the carrier providing it, so charging the provider of short-term or temporary services would result in double recovery for the same "connection." In any event,

---

[16]/ *Id*. ¶¶ 52-53.

[17]/ *Id*., ¶¶ 68, 70.

requiring carriers that provide only short-term or temporary telecommunications to contribute to universal service for such services would impose significant administrative burdens on such carriers. Imposing a contribution requirement on the same basis as applies to carriers who establish a "permanent" per-line or per-connection relationship with their customers is inconsistent with Section 254(d)'s requirement that contribution burdens be imposed on an equitable basis.

The difficulty inherent in applying a per-connection or per-line flat-fee contribution requirement on providers of "temporary" telecommunications is another reason why the FCC should grant BTNA's petition for clarification regarding its Broadcast Services unit. [18]/ In that Petition, BTNA showed that all providers of video distribution services on a non-common carrier basis, such as broadcasters, cable operators, direct broadcast satellite ("DBS") providers, and the like, have already been exempted from universal service contribution obligations, and that the Commission should clarify that the same treatment applies to offerings provided by BTNA Broadcast Services. Most of those offerings consist of "occasional use" transmissions – such as the ability to transmit a live video feed from a 2-hour political debate or sporting event – which properly would not be subject to contributions under the Commission's proposal, since no permanent "connection" is established to the end user.

---

[18]/ *See Commission Seeks Comment on BT North America, Inc.'s Expedited Petition for Clarification of the Contribution Obligations of Video Distribution Service Providers*, CC Docket 96-45, Public Notice, DA 02-570 (rel. March 8, 2002), 67 Fed. Reg. 12568 (March 19, 2002).

IV. AN IDENTICAL CONTRIBUTION SYSTEM SHOULD APPLY TO ALL PROGRAMS

The Commission should continue to ensure that the contribution system is identical for the universal service fund, telecommunications relay services, local numbering portability, and the North American Numbering Plan. BTNA is troubled by the Commission's assumption that "contributors would continue reporting revenues on an annual basis for the Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs." [19]/ Retaining revenue-based reporting and contribution systems for those programs while moving to a connection/capacity-based system for universal service would require duplicative record-keeping and reporting, which would be extremely burdensome for carriers while serving no legitimate public interest purpose. If the Commission concludes that a flat-rate per connection contribution methodology would serve the public interest for universal service, then an identical methodology would also serve the public interest for the other programs. [20]/

V. THERE IS NO NEED FOR THE PROPOSED RESTRICTIONS ON CARRIER COLLECTION OF CONTRIBUTIONS

The Commission has proposed to adopt a "fundamental change" in carrier recovery of universal service contributions by implementing a collect-and-remit system. If it adopts such a system, then the amount that a carrier remits to

---

[19]/ *See* NPRM ¶ 78.

the fund would be identical to the amount that the carrier collects from its customers, which would eliminate the need for the FNPRM's proposed restrictions on how carriers collect contributions. [21]/ In a capacity-based system with collect-and-remit, there would be no need for FCC rules on carrier collection of universal service contributions, such as mandating uniform mark-ups, adopting interim safe harbors for recovery mechanisms, or imposing restrictions on how carriers label the mark-up, and so forth. [22]/

In particular, there is no need for FCC rules restricting how non-dominant carriers recover universal service contributions from customers, as competitive constraints will preclude carriers from imposing unacceptable charges on customers or describing them in a manner customers find objectionable. BTNA submits that there is even less of a need for such rules in the case of private carriage or contract-based common carriage (as opposed to mass-market services), in which customers can and do negotiate on charges and billing descriptions such as those for universal service contribution recovery. The Commission should not necessarily apply to contract-based customers, who can protect themselves through the contract negotiation process, rules that it designs to protect mass-market customers.

---

[20]/ If necessary, the Commission should seek statutory changes to ensure that the regulatory fees can be assessed and collected on the same basis as the other programs.

[21]/ FNPRM at ¶¶ 101-102.

[22]/ *See id*. at ¶¶ 96, 98-99.

CONCLUSION

For the foregoing reasons, BTNA respectfully requests that the Commission adopt the policy recommendations discussed above and in BTNA's prior comments in these proceedings.

Respectfully submitted,

BT NORTH AMERICA INC.

/s/ David L. Sieradzki

A. Sheba Chacko
Kristen Neller Verderame
BT North America Inc.
11911 Freedom Drive, 11th Floor
Reston, VA 20190
(571) 203-6821

Joel S. Winnik
David L. Sieradzki
Ronnie London
Hogan & Hartson L.L.P.
555 Thirteenth St., N.W.
Washington, D.C. 20004
(202) 637-5600

Dated: April 22, 2002